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Before The
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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MAY 22 1998

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of

Biennial Regulatory Review – Amendment of)
Parts 0, 1, 13, 22, 24, 26, 27, 80, 87, 90, 95, 97)
and 101 of the Commission's Rules to Facilitate)
the Development and Use of the Universal)
Licensing System in the Wireless Telecommu-)
nications Services)

WT Docket No. 98-20

COMMENTS OF BELL ATLANTIC MOBILE, INC.

BELL ATLANTIC MOBILE, INC.

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COMMENTS OF BELL ATLANTIC MOBILE, INC.

I. SUMMARY

Bell Atlantic Mobile, Inc. ("BAM")¹ submits these initial comments on the Notice of Proposed Rulemaking in this proceeding (FCC 98-25, released March 18, 1998) ("Notice"). BAM supports the Commission's efforts to streamline its processing of applications for wireless services, and to replace the current system of paper and microfiche applications with the Universal Licensing System ("ULS"). BAM agrees with the Commission that ULS has the potential to provide the public with easier access to Commission databases, improve and expedite the handling of

¹ Bell Atlantic Mobile, Inc. holds authorizations in multiple wireless services to provide cellular radiotelephone service to subscribers in nineteen states and the District of Columbia. It submits numerous applications that would be subject to the Universal Licensing System, and thus will be directly affected by the actions the Commission takes in this rulemaking.

applications, and ultimately reduce costs for both the public and the Commission. Based on its long experience as a wireless carrier and licensee in numerous radio services, BAM recommends a number of changes in the Notice's initial proposals. BAM believes these changes will further improve ULS and will achieve the Commission's goals in this proceeding.

II. CONSOLIDATION OF APPLICATION FORMS (§§ 15-18)

BAM supports the Commission's goals of adopting "a simplified set of rules that minimizes filing requirements as much as possible" and that collects "only the data necessary to carry out our statutory spectrum management and compliance responsibilities." Notice at § 8. BAM thus agrees with the proposal to eliminate the many duplicative (and often conflicting) forms currently used for licensing wireless services and to replace them with a far smaller number of forms. Consolidation will make application filing and processing easier and more efficient.

Form 601 Should Be Simplified. Proposed FCC Form 601, however, actually increases the burden on licensees and the Commission, and imposes new reporting obligations for routine matters that have not previously existed. This is contrary to the Notice's stated goals. Form 601 requires that three detailed pages of information and exhibits be completed every time the form is used, including data on basic qualifications and foreign ownership. This may be appropriate when Form 601 is used for a new license or for a major change in an existing license. But it is an unnecessary burden for minor changes, notifications of completion of

construction, consummation notices, requests for extension of time and similar matters. Today these are handled by the Commission without requesting the information called for by the proposed Form 601, or indeed any application at all. For example, Form 489, which is used by mobile services licensees to report certain changes in facilities or completion of construction, is a simple two-page notice that does not ask these questions. Many matters are handled merely by letter. The Notice supplies no reason for adding to applicants' paperwork and reporting obligations by requiring submission of Form 601 except for applications for new stations or major modifications for existing stations.

Additionally, BAM recommends that the "main part" of Section 601 be shortened to a one-page form that asks only for applicant name and TIN, address, contact person and certification. This will enable an applicant to complete this information quickly and then attach the appropriate schedule or letter request.

This approach will also resolve the Notice's questions about how to handle letter requests under ULS. (Id. at ¶¶ 28-29.) The Notice agrees that requiring proposed Form 601 for such requests may be burdensome, but that there are benefits in ensuring all such requests are handled through use of a standardized form. These dueling concerns can be reconciled by using a simple, one-page Form 601 followed by the letter. This will minimize burdens on wireless licensees, yet help ensure that the request is quickly acted on by appropriate Commission staff. Applications for new facilities or major modifications can then be handled by submitting one or more schedules to Form 601 as appropriate.

Forms 603 and 604 Should Be Combined. The Notice proposes separate new Forms 603 and 604 for assignments of wireless licenses and transfers of control of entities holding licenses. BAM sees no reason why there needs to be distinct forms for assignments of licenses as opposed to transfers of control. In either case, all of the information the Commission obtains about the basic and other qualifications of the entity acquiring the license (either through an assignment of license or through a transfer of control of the licensee) is identical. Public notice procedures and other processing of either application should be identical.

Moreover, cellular, paging and other mobile services licensees have for years used a single form, Form 490, for both assignments and transfers of control, with no apparent problems. That form simply asks the applicants to identify the nature of the transaction so that it can be processed either as an assignment or transfer of control. The Notice does not identify any problems with the current Form 490. Since the goal is to reduce the number of forms, the Commission should reconsider its proposal to use two forms for assignments and transfers, and use a single form instead. This will achieve one of the goals of this proceeding by reducing further the number of forms that wireless licensees and the Commission must work with.

Proposed Forms 603 and 604 also require the filing of contracts, agreements or other instruments related to the transaction. This has not been previously required in the mobile services, since the Commission does not pass on specific contractual provisions. It is also unnecessary to achieve any regulatory purpose, would load huge amounts of additional information into ULS, and would be unduly

burdensome to licensees. These requirements should not be imposed. In the event that the Commission has specific concerns as to a particular transaction, it can request any additional documents needed to complete its review, but blanket filing of all contracts would impose burdens without any countervailing benefits.

Questions as to Basic Qualifications Should Be Simplified. The questions on each of the proposed forms concerning an applicant's basic qualifications should be streamlined to seek only relevant information. The proposed forms ask not merely whether the applicant has had any authorization revoked, but also whether it has had any application denied. Many licensees have filed applications to participate in lotteries or auctions for new wireless services which were not ultimately granted. This has no relevance to their qualifications. Yet the form could be read to request information about any applications which were not granted. The forms should be changed to request information only about revocation of existing Commission authorizations.

The forms also request information about pending litigation concerning certain violations of law. The Commission has consistently held, however, that pending litigation involving mere allegations of misconduct is not relevant to determining an applicant's basic qualifications.² It is only when a court or agency finds that the applicant did in fact engage in such misconduct that the Commission

² See, e.g., Amendment of Part 22 of the Commission's Rules Relating to License Renewals in the Domestic Public Cellular Radiotelecommunications Service, 7 FCC Rcd 719 (1992); Policy Regarding Character Qualifications in Broadcast Licensing, 102 FCC 2d 1179 (1986).

will consider it. There is thus no reason to require applicants to report pending litigation. This burden is particularly unjustified if carriers had to update this information with each application. Since the question serves no relevant purpose, and imposes paperwork burdens inconsistent with the goals of this proceeding, it should be eliminated on all forms. The questions should be changed to request information only about findings of cognizable violations of law.

III. MANDATORY ELECTRONIC FILING AND DEADLINE FOR CONVERSION TO ULS (§§ 19-25)

BAM appreciates the Commission's desire to move toward total dependency on electronic filing, but is concerned that the timetable proposed in the Notice is too ambitious. There continue to be bugs in the ULS, both in inputting data and in attempting to access the system itself which have not been resolved, as the Wireless Telecommunications Bureau's own public demonstration last month revealed. Yet the Notice proposes to force exclusive reliance on the ULS in less than eight months, on January 1, 1999. BAM believes the more prudent course would be to require electronic filings as of that date, but to permit paper filings to be made in situations where an applicant cannot gain access to the ULS. The applicant should also be permitted to file a disk containing the contents of the application or other request, as is the case for certain documents filed with the Commission today. As applicants and the Commission gain more experience with the ULS, the need for this backup system can be reexamined. But it is important at this time for both applicants and the Commission to have a backup system that can be used should an

applicant be unable to access the ULS due, for example, to problems with an applicant's computer system or modem, telephone line failures, or problems with the ULS itself.

The Commission also should not adopt the rigid January 1, 1999, deadline that the Notice proposed. Given the volume of comments and reply comments the Commission will receive in this docket, the massive changes to the rules and forms, and the need to update numerous databases before ULS can be effectively used, adopting a hard and fast deadline is not warranted. Once the Commission reviews the comments and decides on final rules, it will only then be able to make the necessary modifications to the ULS and its forms. Time is needed for that process. After the Commission completes its work, applicants then need time to modify their own computer systems to permit access to and use of the ULS. In addition, wireless carriers such as BAM that intend to use the "batch" application process for some filings must have their own forms designed and approved by the Commission, a process that in BAM's experience takes several months or more.

BAM thus recommends that the Commission not adopt a specific deadline. Instead, the order adopting new rules should state that they will take effect 120 days after the Commission issues a public notice that the necessary upgrades and other changes to the ULS have been made. This will ensure that both the Commission and carriers have the necessary time to make the many and complex changes to their systems and procedures that this massive rewrite of the rules and forms will cause.

BAM supports the proposal to eliminate all rules requiring multiple paper copies and microfiche copies of wireless services applications and other submissions. The Notice states that even if paper copies are filed, they will be scanned into the ULS, eliminating the need for multiple copies as well as any need for microfiche. BAM agrees. Microfiche in particular is expensive for carriers to obtain and very difficult to access at the Commission. The microfiche rules should be eliminated entirely. BAM also agrees with the proposal that any paper applications that are submitted should be accompanied by a diskette containing the complete application and any exhibits. This will facilitate entry of the application into the ULS.

IV. FILING OF PLEADINGS (§§ 26-27) AND ACCESS TO ULS

BAM supports the proposal to allow electronic filing of pleadings, but does not support mandatory electronic filing of pleadings at present. Until the ULS has been operated for some time and inevitable problems are identified and resolved, parties may not be able to access all pleadings. Immediate and full access to pleadings and other documents is particularly critical given that responsive pleadings are time-sensitive and the current service rules do not require formal service for all informal objections or comments on specific applications. BAM's experience with accessing information in current databases has been mixed at best. BAM is also concerned as to how the Commission is ensuring that its databases are accurate and up-to-date when the ULS goes into operation. Completing that process before the new rules take effect is particularly essential given the extremely

high on-line fees for access which, at \$2.30 per minute, far exceed charges for many other online databases. BAM thus recommends that the Commission permit electronic filing of pleadings, but also permit parties to continue to file a paper copy with a diskette containing their pleading or other document. In addition, the Commission should use this opportunity to extend its service rules to require service of all objections to applications.

V. MAJOR AND MINOR APPLICATION RULES (¶¶ 34-41)

BAM supports a single, consistent set of rules for all wireless services that distinguish between major and minor filings, and thus largely supports the Notice's proposals. BAM disagrees, however, with the classification of “any modification or amendment requiring notification to the Federal Aviation Administration” as a “major change.” (Id. at ¶ 38.) This would reverse current Commission policy and rules, which do not treat applications as major merely because they involve FAA notice. Applicants are already required to notify the FAA before constructing most antenna towers, and to obtain a “no hazard determination” from that agency prior to construction. As long as applicants have obtained the FAA’s determination, there is no reason why the application must be treated as a major change requiring prior Commission approval and public notice, and be made subject to the delays inherent in that process.

The Notice is ambiguous as to whether a change in the service area contours of a mobile system would constitute a major change. Currently, with regard to the

cellular service, the Part 22 Rules provide that any change in a system's Cellular Geographic Service Area ("CGSA") is a major change. Broadband PCS providers licensed under Part 24, however, do not have defined service areas comparable to CGSAs and are not subject to this requirement. Yet licensees in both services have geographically-defined service areas. The Commission should have symmetrical rules for both of these competing mobile services. Since cellular systems are largely built out, there is no reason for the Commission to require adjustments to a cellular CGSA as a major change. The new rules classifying changes as major or minor should clarify this by clearly stating that any modifications to service areas are not for that reason alone major changes.

In short, the only major changes for geographically-based CMRS systems should be (1) substantial changes in ownership or control, (2) requests for partitioning or disaggregation, and (3) changes requiring an environmental assessment. The rules should state that all other changes for these systems are minor changes. BAM agrees, however, with the proposed rules that define which changes are classified as major for site-specific licensees.

VI. SUBMISSION OF OWNERSHIP INFORMATION (§§ 42-48)

BAM opposes the Notice's proposal to require wireless licensees to update ownership information each time any change occurs in information on file. See new Section 1.919(d). This would be a radical change in current ownership reporting requirements that would impose significant yet unwarranted burdens on licensees.

The Commission currently requires wireless carriers to file ownership information in the form of a "Licensee Qualifications Report" (Form 430) with their first application for an authorization. If and when licensee files a subsequent application, it must update the Licensee Qualifications Report if information has changed in the interim. But it is not required to update that Report in the intervening time. (Even this requirement goes beyond ownership reporting obligations in other services. Broadcast licensees, for example need update ownership information only once a year regardless of any intervening changes. See Section 73.3615.)

The new rules should require that an updated Licensee Qualifications Report be included with any new application for authorization, but that licensees need not otherwise update ownership information. There is no need for more frequent submissions. Licensees must already obtain prior Commission authorization for any ownership changes that constitute a transfer of control or assignment. Ownership changes that do not rise to the level of a transfer of control are not reviewed or acted on by the Commission. The proposed rule would require many licensees to constantly to amend their ownership information without serving any regulatory purpose. This would be inconsistent with the goals of the Federal Paperwork Reduction Act and with the Commission's own efforts to streamline and simplify reporting burdens.

The Notice proposes to replace the current Licensee Qualifications Report with a new Form 602. The Commission should state that a licensee need not submit new Form 602 unless and until it submits an application that requires

ownership information. Otherwise, the ULS will be inundated at the start with replacement ownership information on the new form, even though that information may be no different than information already on file in Form 430s.

BAM supports the Notice's proposal to eliminate Section 22.108 regarding the provision of information as to parties holding five percent or greater interests in an applicant, and making all attribution rules consistent with Section 1.2112.

Form 602 is itself onerous and unduly burdensome. In keeping with the Commission's goals of minimizing filing requirements and eliminating unnecessary submission requirements, the Form should require much less information. It requires that information be provided for each direct and indirect owner of the licensee holding more than a ten percent interest. This is excessive. Many wireless licensees are partnerships or other entities with numerous minority interests of ten percent or greater which do not control the licensee. There is no regulatory reason to require ownership information to be submitted concerning minority owners. Additionally, having to provide this information for all intermediate entities holding such interests would result in massively more detailed ownership information being filed, again with no regulatory benefit or justification. The Commission needs only information about (1) the licensee and (2) the entity ultimately in control of the licensee, if any. That is all the information that Form 602 should request.

VII. OTHER ISSUES

Frequency Coordination (¶¶ 49-50). BAM supports the Commission's proposal to make its frequency coordination rules consistent across all wireless services, and to require frequency coordination only for applications for new stations or for major modifications to existing facilities. This change will enable carriers such as BAM which operate stations in multiple wireless services to deal with a consistent set of rules. Moreover, frequency coordination is not necessary where an application seeks only minor changes to existing facilities.

Discontinuance of Reinstatement Applications (¶¶ 55-58). BAM supports the proposal that the Commission send notices to all wireless licensees 90 days before the expiration of a license. Notification should not burden Commission resources since it can be automatically generated by the ULS using data already in appropriate databases. BAM operates cellular systems in 77 different markets, and the lack of uniform expiration dates for licenses in these markets makes tracking expiration dates difficult. BAM has also received a number of licenses with incorrect expiration dates. Receiving a notice in advance as to what the Commission believes is the expiration date will help to correct errors and ensure that timely renewal applications are filed. BAM also believes that notification should be sent to the contact person for each licensee by regular mail.

Construction and Coverage Verification (¶ ¶ 59-62). BAM supports the Notice's proposal to provide each licensee with advance notice of construction and

coverage deadlines, and recommends that the advance notice be 90 days before the applicable deadline. BAM also recommends that proposed Section 1.946(d) be clarified to state that notification of completion of construction of a new or modified wireless facility be filed within 15 days, rather than within 15 days of the end of the applicable construction or coverage period. If a party holding an authorization completes construction prior to the end of the pertinent time period, it should notify the Commission of that fact, so that the ULS system can be kept current.

Conversion to NAD83 (§§ 69-70). BAM supports the Commission's proposal that all applications provide site coordinate data using the North American Datum 83 (NAD83) survey. BAM is concerned, however, that the existing databases contain tens of thousands of site coordinates that use the old NAD27 survey. The Commission will thus be receiving applications with NAD83 data, but will evaluate those applications in the event of overlap or interference issues by using old NAD27 coordinate information. This "apples to oranges" comparison will cause confusion and will slow processing of applications. The Commission should not require the use of NAD83 until it has completed the conversion of all existing site coordinate information in its databases to NAD83.

Cellular Applications. Schedule F of Proposed Form 601 will be used to apply for facilities in the cellular radiotelephone service (Part 22). Previously, cellular applicants for a new station or for major modifications to an existing station were required to submit a map depicting the proposed or modified CGSA, and this

map was useful to parties seeking to identify the authorized coverage of different systems, but the new schedule does not appear to call for submission of a map. In addition, cellular applicants may need to obtain authorizations for sectorized antenna systems that call for radial data that cannot be contained in the data fields listed on page 3 of the schedule. These matters should be addressed.

Application Fees. The Notice does not address one important matter that must be clarified as part of any action in this docket. It is silent on how application filing fees will be handled once the ULS system is in place. Currently, wireless applications are not processed by the Bureau unless and until the application and the required fee accompanying it have been received by the Commission's lockbox at the Mellon Bank in Pittsburgh, and the fee has been found to be correct. The application is then placed on public notice. Under ULS, wireless applications will no longer be sent to Pittsburgh. The Notice, however, does not explain how filing fees are to be paid. If the fee system rules (47 C.F.R. § 1.1100 et seq.) continue to require that all fees be paid at the lockbox, the ULS will be "accepting" applications electronically without knowing whether the fee has been paid. Yet if the ULS does not accept applications until the fee has been received and deemed correct, the significant processing delays that have become endemic to the current fee and lockbox system will deprive the ULS of much of the expected benefits of speed and efficient action. The Commission should thus address, in this proceeding, needed modifications to its fee filing rules that will establish procedures for electronic funds transfers or other forms of payments that can be made concurrently with the

submission of the application or other request to the Commission's ULS database.

The Commission also needs to address whether applicants must continue to use the Form 159 "Fee Remittance Advice" document with their filings and, if so, how that document will be incorporated into the new forms.

VIII. CONCLUSION

BAM requests that the Commission adopt changes to the implementation of the ULS, in the forms to be used by licensees in the wireless services, and in the rules governing submission and processing of those forms, in accordance with the recommendations outlined above.

Respectfully submitted,

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